

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSEPH LOCHUCH EWALAN,

Petitioner,

v.

DON HOLBROOK,

Respondent.

Case No. C20-01497-JLR-SKV

ORDER ON “MOTION FOR WRIT OF  
HABEAS CORPUS TO ADMIT  
ADDITIONAL MEMORANDUM OF  
AUTHORITIES” AND “MOTION IN  
SUPPORT OF WRIT TO  
RELEASE/SUPPLEMENT AMENDED  
HABEAS WRIT”, AND RENOTING  
MOTION TO PRODUCE COURT OF  
APPEAL TRANSCRIPT AND  
HABEAS ANSWER

This is a 28 U.S.C. § 2254 habeas action. Petitioner has filed an amended petition in this matter, Respondent has filed an answer and Petitioner has filed a response to the answer. Dkts. 13, 34, 40. Currently pending before the Court are Petitioner’s habeas petition, Dkt. 13, Petitioner’s “motion for writ of habeas corpus to admit additional memorandum of authorities”, Dkt. 43, Petitioner’s “motion in support of writ to release/supplement amended habeas writ”, Dkt. 45, Petitioner’s “motion to order defendants to produce court of appeal transcript”, Dkt. 39,

ORDER ON “MOTION FOR WRIT OF HABEAS  
CORPUS TO ADMIT ADDITIONAL  
MEMORANDUM OF AUTHORITIES” AND  
“MOTION IN SUPPORT OF WRIT TO  
RELEASE/SUPPLEMENT AMENDED HABEAS  
WRIT”, AND RENOTING MOTION TO  
PRODUCE COURT OF APPEAL TRANSCRIPT  
AND HABEAS ANSWER - 1

Petitioner's "motion for leave to expand record under Rule 7", Dkt. 58, and Petitioner's "motion to expand record re two items," Dkt. 59.

By order dated September 23, 2021, the Court directed Respondent to respond to Petitioner's "motion for writ of habeas corpus to admit additional memorandum of authorities", Dkt. 43, and "motion in support of writ to release/supplement amended habeas writ", Dkt. 45. Dkt. 50. The Court noted that, although somewhat unclear, it appeared Petitioner was seeking to include additional arguments and case law in support of his habeas petition as well as potentially attempting to raise new claims. *Id.*

Respondents responded to the motions indicating that it appeared Petitioner was attempting to supplement his existing claims with additional argument and case law and that, to the extent that was the case, Respondent did not object. Dkt. 52. However, Respondent indicated that to the extent Petitioner was attempting to raise new habeas claims, such a request should be denied as Petitioner had failed to properly move to amend and failed to include a copy of the proposed amended habeas petition as required by Local Rule 15. *Id.*

Upon reviewing the parties' submissions and the relevant record, the Court hereby  
ORDERS:

- (1) The Court construes Petitioner's "motion for writ of habeas corpus to admit additional memorandum of authorities", Dkt. 43, and "motion in support of writ to release/supplement amended habeas writ", Dkt. 45, as requests to supplement his habeas petition with additional arguments and case law presented in support of *existing claims only*. Accordingly, Petitioner's motions, Dkts. 43 and 45, are GRANTED and the Court

ORDER ON "MOTION FOR WRIT OF HABEAS  
CORPUS TO ADMIT ADDITIONAL  
MEMORANDUM OF AUTHORITIES" AND  
"MOTION IN SUPPORT OF WRIT TO  
RELEASE/SUPPLEMENT AMENDED HABEAS  
WRIT", AND RENOTING MOTION TO  
PRODUCE COURT OF APPEAL TRANSCRIPT  
AND HABEAS ANSWER - 2

1 will consider any additional arguments and caselaw presented in support of Petitioner's  
 2 *existing claims* only.

3 (2) Petitioner is advised that if he intends to attempt to raise *new claims* (in addition to the  
 4 existing 14 claims in his amended habeas petition), he must file a proper motion to amend  
 5 his habeas petition and include a proposed amended petition containing all grounds for  
 6 relief. *See* Local Rule 15.<sup>1</sup>

7 (3) The Court notes that Petitioner has recently filed a "motion for leave to expand record  
 8 under Rule 7", Dkt. 58, and a "motion to expand record re two items," Dkt. 59, which are  
 9 both noted for consideration on December 17, 2021. Because the Court finds it  
 10 appropriate to consider these motions, Dkts. 58 and 59, as well as Petitioner's "motion to  
 11 order defendants to produce court of appeal transcript", Dkt. 39, in considering the  
 12 entirety of the habeas petition and the sufficiency of the record, the Clerk is directed to  
 13 **re-note** Petitioner's motion to order defendants to produce court of appeal transcript",  
 14 Dkt. 39, and the Respondent's answer to the petition, Dkt. 34, for consideration to  
 15 **December 17, 2021.**

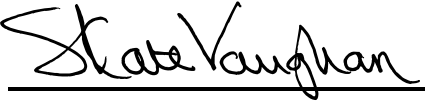
---

16  
 17 <sup>1</sup> Local Rule 15 provides, in its entirety:

18 A party who moves for leave to amend a pleading, or who seeks to amend a pleading by  
 19 stipulation and order, must attach a copy of the proposed amended pleading as an exhibit  
 20 to the motion or stipulation. The party must indicate on the proposed amended pleading  
 21 how it differs from the pleading that it amends by bracketing or striking through the text  
 22 to be deleted and underlining or highlighting the text to be added. The proposed  
 23 amended pleading must not incorporate by reference any part of the preceding pleading,  
 including exhibits. If a motion or stipulation for leave to amend is granted, the party  
 whose pleading was amended must file and serve the amended pleading on all parties  
 within fourteen (14) days of the filing of the order granting leave to amend, unless the  
 court orders otherwise.

1 The Clerk is directed to send copies of this order to the parties and to the Honorable  
2 James L. Robart.

3 Dated this 14<sup>th</sup> day of December, 2021.

4   
5

6 S. KATE VAUGHAN  
United States Magistrate Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

23 ORDER ON “MOTION FOR WRIT OF HABEAS  
CORPUS TO ADMIT ADDITIONAL  
MEMORANDUM OF AUTHORITIES” AND  
“MOTION IN SUPPORT OF WRIT TO  
RELEASE/SUPPLEMENT AMENDED HABEAS  
WRIT”, AND RENOTING MOTION TO  
PRODUCE COURT OF APPEAL TRANSCRIPT  
AND HABEAS ANSWER - 4